

"Whether, on or about the 25th day of November 1863, the deceased Henry Wilson, miner, Haughhead, the son of the pursuer, while engaged in the employment of the defenders as a miner in said pit, was killed by an explosion of firedamp, through the fault of the defenders—to the loss, injury, and damage of the pursuer?"

Damages laid at £400.

Evidence having been led on both sides, the jury, after an absence of two hours, returned a verdict for the pursuer—damages, £100.

Friday, Saturday, and Monday, April, 6-9.

(Before the Lord President).

SKINNER AND MACDONALD *v.* MUNRO.

Restitution—Master and Servant—Bank Cheque—Donation. In an action at the instance of a person's representatives against his servant for payment of two bank cheques, which the servant alleged had been given to him by his master, verdict for the pursuers in regard to one of them.

Counsel for Pursuers—Mr Patton and Mr Shand. Agent—Mr J. T. Mowbray, W.S.

Counsel for Defender—Mr Gifford and Mr Deas. Agent—Mr John Robertson, S.S.C.

This was a case in which Allan Maclean Skinner, Esq., Barrister-at-Law and Queen's Counsel, and residing at Brocton Lodge, in the county of Stafford, in England, and Major Alexander James John Macdonald, sometime Fort-Major of Edinburgh Castle, and residing in Edinburgh, trustees and executors of the deceased Ronald Macdonald, formerly Captain in her Majesty's 12th Regiment of Foot, thereafter residing at No. 2 Sandford Street, Portobello, in the county of Edinburgh, and the said Alexander James John Macdonald, as mandatory for the said Allan Maclean Skinner, were pursuers; and Archibald Innes Munro, residing at No. 82 High Street, Portobello, aforesaid, and sometime servant to the said Ronald Macdonald, was defender. The following were the issues:—

"I. It being admitted that at the dates aftermentioned the defender was a servant in the employment of the said deceased Ronald Macdonald:

"Whether, of the dates aftermentioned, the defender, by virtue of cheques granted by the said deceased Ronald Macdonald on his account with the Royal Bank of Scotland, uplifted from the branch of that bank at Portobello the following sums, viz.—

On or about 2d May 1864.....	£150	0	0
On or about 12th May 1864....	200	0	0
On or about 2d July 1864.....	50	0	0
On or about 8th July 1864.....	200	0	0

£600 0 0

And whether the defender failed to account for and is resting-owing to the pursuers the sum of £450, part of the said sums, with interest since 28th July 1864, or any part thereof?"

"II. It being admitted that during the period aftermentioned the defender was a servant in the employment of the said deceased Ronald Macdonald:

"Whether, during the period between 1st May and 28th July, both 1864, the defender obtained from the said deceased Ronald Macdonald part of the sums drawn under the said cheques, and amounting to £450, or any part thereof, for behoof of the said deceased, and whether the defender retains and is resting-owing to the pursuers the said sum of £450, or any part thereof, with interest since 28th July 1864?"

The LORD PRESIDENT, in charging the jury, stated that the question which they had to decide

had only reference to the two cheques for £200 each, the cheque for £150 and £50 having, according to the arguments which were submitted, been substantially accounted for. It was not alleged by the defender that he gave the two £200 cheques to the late Captain Macdonald, or that he gave them away to any other person by his desire, and the executors were demanding that he should pay the sums to them. The defender maintained that he was entitled to retain the sums, and said that his master, Captain Macdonald, made him a present of them, first of the £200 cheque, drawn on the 12th of May, and at a subsequent period of the £200 cheque, drawn on the 8th July. The question then came to be whether this was or was not a true statement in the circumstances, and whether the jury believed or did not believe that the money was so given to him. The defender, in support of his views, referred to the position in which he was placed in reference to the deceased. He said that he was servant to Captain Macdonald for twenty years, that he was very attentive to his master and had gained his confidence, and it was natural and reasonable to say that the deceased would have acknowledged his faithful services. He further said that the above sum of £400 which he got in addition to £100 left by will was not unreasonable. Second, he said the cheques were written out by Captain Macdonald and the money drawn, and that no other use or purpose of drawing that money was suggested, and that the defender was allowed to retain the money during Captain Macdonald's life without any question about it. The third thing the defender said was that there were certain documents he founded on, one of them signed, and two of them written and signed by Captain Macdonald. That was the sum of the case for the defender. Then on the part of the pursuers it was said in substance that Captain Macdonald was a gentleman of limited income—£360 being proved to be the amount of his annual income; that at the period in question he was an old gentleman in his eighty-fourth year, and in bad health; that the defender was constantly about him, and might in these circumstances have easily deceived him; and that the captain had not been unmindful of the services of the defender, because he had left him in his will a legacy of £100. Then again, the pursuers said they were not about Captain Macdonald to hear from him what his purpose was in drawing the money, nor could they know what instructions he might have given to the defender as to the application of the money. Then they said further, that the documents on which the defender founded were suspicious in themselves, and that his own account of the matter, and the statements and the evidence they had heard, showed that he was not speaking the truth and telling a true story. It was for the jury to deal with these views respectively, as to which was the one that ought to be believed. His Lordship then entered at length into the evidence led on both sides, and concluded by stating that the second issue was not insisted in, as it related to the same amount as was referred to in the first issue, and was only put there that the pursuers might ascertain how the money had been got.

The jury, after an absence of three hours, returned a verdict, by a majority of ten to two in favour of the pursuers for £200.

Monday and Tuesday April 9 and 10.

M'LACHLANS *v.* GARDNER.

Reparation—Culpa—Master and Servant. In an action by the widow and children of a fireman at a colliery who lost his life in consequence of defective machinery—verdict for the pursuers.

Counsel for Pursuers—Mr Macdonald and Mr Strachan. Agents—Messrs Macgregor & Barclay, S.S.C.

Counsel for Defender—Mr William Watson and Mr W. M. Thomson. Agent—Mr George Wilson, S.S.C.

In this case Mrs Jane Thomson or M'Lachlan, residing in Hillhead, Kirkintilloch, in the county of Dumbarton, widow of the now deceased William M'Lachlan, some time fireman in the coal-mine or pit known as the Solesgirth Colliery, near Kirkintilloch, and William M'Lachlan, Elizabeth M'Lachlan, and Mary M'Lachlan—all residing at Hillhead, Kirkintilloch—children of the said Mrs Jane Thomson or M'Lachlan and the now deceased William M'Lachlan, were pursuers; and James Gardner, coalmaster, Solesgirth, near Kirkintilloch in the county of Dumbarton, was defender. The following was the issue sent to the jury:—

"It being admitted that the defender is proprietor or tenant of the coal-mine or colliery known as the Solesgirth Colliery, near Kirkintilloch:

"Whether, on or about the 6th June 1865, the said William M'Lachlan was in the service of the defender as a fireman in the said mine or colliery, and while in the course of being drawn up the pit shaft was killed by being thrown out of the cage, owing to the defective machinery for working the said cage, through the fault of the said defender—to the loss, injury, and damage of the pursuer?"

Damages laid at £400 to the said Mrs Jane Thomson or M'Lachlan, and at £250 to each of the pursuers, the said William M'Lachlan, Elizabeth M'Lachlan, and Mary M'Lachlan.

The LORD PRESIDENT, in summing up said the question was whether this loss of life was caused by machinery which was defective through the fault of the defender. It was the duty of persons such as the defender to have machinery properly fit for the purpose for which it was destined. It was impossible to foresee and prevent all accidents; and therefore when the law required that a master should provide proper and suitable machinery, it meant that all due and reasonable care should be taken that the machinery be of a proper kind. The case for the pursuers was that the machinery was defective. Their theory was that the rope had got over one of the spokes; that that was the cause of the accident; and that this took place because the pirl was not properly constructed or properly furnished. It was alleged that some of the spokes were altogether wanting, and that some were broken. Then the defender affirmed that the pirl was of the ordinary construction, and furnished in the ordinary way, and that none of the spokes were broken or wanting. As to the question whether spokes were wanting or displaced, which seemed to be the great contention in the case, there were witnesses on both sides. His Lordship then went over the evidence of several witnesses, showing that some said that the machinery was all right, and others that it was not right. It was impossible to hold that all these witnesses could be giving true testimony, and the question was which of them they were to believe; and whatever witnesses they believed, they would give their verdict accordingly.

The jury, after a short absence, returned a verdict for the pursuers, assessing the damages at £100 to Mrs M'Lachlan, £5 to William, £10 to Elizabeth, and £20 to Mary M'Lachlan, the children.

Monday—Thursday, April 9—12.

(Before Lord Mure.)

STEVEN v. M'DOWALL'S TRUSTEES.

Partnership—Reduction—Fraud In a reduction of a signed balance-sheet by a person against the representatives of his deceased partner—verdict for the defenders.

Counsel for Pursuer—Mr Rutherford Clark, Mr Shand, and Mr Bannatyne. Agents—Messrs Hamilton & Kinnear, W.S.

Counsel for Defenders—The Lord Advocate, Mr Gordon, and Mr Gifford. Agents—Messrs J. & A. Peddie, W.S.

This is a case in which Thomas Steven, ironfounder in Glasgow, is pursuer; and Mrs Anne Morris or M'Dowall, residing in Glasgow, relict of the deceased John M'Dowall, ironfounder, Glasgow; William Anderson, accountant in Glasgow; John Brown, jun., cotton-broker there; William Walls, oil merchant there; Alexander Allan, ship-broker there; the Rev. Dr John Eadie, minister of the gospel there; the Rev. Peter M'Dowall, minister of the gospel in Alloa; John Stewart, clothier in Kilmarnock; and Anthony Hanney, cotton-broker in Glasgow—the accepting trustees and executors of the said deceased John M'Dowall, acting under a trust-disposition and deed of settlement executed by the said deceased John M'Dowall, with consent of his wife, upon the 22d day of August 1861—are defenders. The issue sent to the jury was in the following terms:—

"It being admitted that the defenders are the accepting trustees and executors of the said deceased John M'Dowall, ironfounder in Glasgow:

"It being admitted also that the pursuer and the said John M'Dowall carried on the business of ironfounders in Glasgow, as partners of the firm of M'Dowall & Company, prior to the 1st January 1861:

"Whether the pursuer was induced to subscribe the docket to the balance-sheet on pages 66 and 67 of the private ledger and journal, No. 82 of process, and the contract of copartnership, dated 21st and 22d August 1861, of which No. 83 of the process is a copy, by the fraud of the said John M'Dowall?"

The pursuer, Mr Steven, was the nephew of the late Mr M'Dowall, ironfounder, Glasgow. In 1850 he entered into partnership with his uncle, and was to receive for the first two years a fourth of the profits and subsequent to that one-third. The business, it was maintained for the pursuer, was practically conducted by him, with the exception of the financial department, which Mr M'Dowall took into his own hands; and, in addition to his share of the profits, it was arranged that the pursuer should get £100 of salary. In the beginning of 1861 two brothers of the pursuer were taken into partnership along with him, and at that time the balance-sheet and contract of copartnership referred to in the issue were drawn out. In this balance-sheet the assets of the firm were valued at £42,000, and the pursuer said he then understood that it was an exhaustive and complete balance-sheet, and that Mr M'Dowall had averred that nearly the whole of his means was his proportion, being two-thirds of that sum. In September 1861 Mr M'Dowall died, leaving personal estate to the value of £63,000, in addition to heritable property worth £15,000. The pursuer maintained that on investigation it was found that no allowance was made in the balance-sheet for his share of the profits of the company for the ten years from 1850 to 1860, which he had allowed to lie in the concern, having only drawn during that time his salary of £100 a year, while Mr M'Dowall had drawn larger sums from the concern, which did not appear in the balance-sheet. On making application for this share to which he was entitled, he was met with the argument that he had signed the balance-sheet, which represented his share as a third of the £42,000. But he argued that the balance-sheet was only made up for the purpose of settling the affairs between the old company and the new company, and that the accounts of the partners had not been taken into view there, nor were they necessary for that purpose. The sums which Mr M'Dowall had withdrawn during the period of the partnership, as shown by the books and receipts, amounted in all to £30,000, and the present action was raised for the purpose of enabling the pursuer to get the question of his share of that sum thoroughly sifted.

The defenders, on the other hand, emphatically denied that the late Mr M'Dowall was guilty of the